

STATE OF MICHIGAN
DEPARTMENT OF LABOR & ECONOMIC GROWTH
OFFICE OF FINANCIAL AND INSURANCE REGULATION
Before the Commissioner of Financial and Insurance Regulation

In the matter of

XXXXX

Petitioner

File No. 100123-001

v

Blue Care Network of Michigan,
Respondent

Issued and entered
this 28th day of October 2008
by Ken Ross
Commissioner

ORDER

I
PROCEDURAL BACKGROUND

On September 11, 2008, XXXXX, on behalf of his minor son XXXXX ("Petitioner"), filed with the Commissioner of the Office of Financial and Insurance Regulation ("OFIR") a request for external review under the Patient's Right to Independent Review Act, MCL 550.1901 *et seq.* On September 18, 2008, after a preliminary review of the material submitted, the Commissioner accepted the request for external review.

The contract involved here is the "BCN 5" certificate of coverage issued by Blue Care Network of Michigan. The case required analysis by a medical professional. Therefore, the Commissioner assigned the matter to an independent review organization which submitted its analysis and recommendation to OFIR on October 10, 2008.

II
FACTUAL BACKGROUND

The Petitioner, who was born July 2, 2006, has a severe receptive and expressive language delay. On April 24, 2008, he had a speech and language pathology evaluation at

XXXXX Hospital. The Petitioner's father, concerned about his ability to meet speech and language goals, requested speech therapy at XXXXX.

BCN denied the request. The Petitioner appealed BCN's denial through the internal grievance process and received BCN's final adverse determination letter dated September 9, 2008.

III ISSUE

Did BCN properly deny coverage for Petitioner's speech therapy?

IV ANALYSIS

Petitioner's Argument

The Petitioner's father contends that coverage should be provided for the treatment provided by XXXXX because the services are medically necessary. Petitioner was examined on April 24, 2008 by XXXXX, a licensed speech-language pathologist. Ms. XXXXX's report included the following comments:

A child 21 months of age should have a speaking vocabulary of between 20 and 50 words and closer to 2 should have a speaking vocabulary of approximately 200 words and should be beginning to combine two to three words together into functional phrases. In addition, children of this age should be answering simple "yes/no" questions, pointing to body parts, identifying objects and pointing with their finger at objects they desire. [Petitioner] is demonstrating significant difficulty with the above mentioned skills. In other words [Petitioner's] speech and language skills are significantly decreased at this time and this does warrant treatment. It is believed that with appropriate and intensive intervention in a clinical setting with one on one individual treatment in addition to a strong home program that [Petitioner] does have a good prognosis.

Ms. XXXXX recommended an intensive speech and language treatment program conducted twice weekly on an individualized basis as well as direct parent training for a home treatment program.

In addition, Dr. XXXXX, the Petitioner's otolaryngologist, in a letter dated August 11, 2008 stated that he did not believe that Petitioner had a developmental problem. Rather, he believed that Petitioner's speech problems were related to hearing problems. Dr. XXXXX also expressed the concern that "there may be some additional emotional or psychological issues that are developing." He expressed support for "appropriate and aggressive language therapy."

Respondent's Argument

In its final adverse determination, BCN denied coverage for speech therapy at Beaumont stating that their internal review of the medical documentation led them to conclude that Petitioner's condition was "developmental in nature." The adverse determination stated that Petitioner's speech therapy "is not covered for chronic conditions or developmental speech abnormalities."

Commissioner's Review

The issue in this case is whether BCN properly denied coverage for speech therapy services. The BCN certificate of coverage describes the requirements for receiving coverage for speech therapy services:

Section 1.14 OUTPATIENT REHABILITATION

Outpatient rehabilitation includes:

- Medical rehabilitation
- Physical therapy
- Occupational Therapy
- Speech Therapy

Short-term outpatient medical rehabilitation and physical, occupational and speech therapy are covered when they are medically necessary for a condition that can be expected to improve significantly within 60 consecutive days. These services must be preauthorized by your Primary Care Physician and BCN.

NOTE: Medical rehabilitation is a treatment for recovery from surgery, disease or injury. This also includes cardiac and pulmonary rehabilitation.

Copayment: \$5 for each covered visit

Limitation: One period of treatment for any combination of therapies within 60 consecutive days is covered per medical episode.

General Exclusions include but are not limited to:

- Cognitive retraining.
- Vocational rehabilitation
- Therapy to maintain current functional level and prevent further deterioration.
- Treatment during school vacations for children who would otherwise be eligible to receive therapy through the school or a public agency.

Speech therapy exclusions include:

- Chronic conditions or congenital speech abnormalities.
- Learning disabilities.
- Deviant swallow or tongue thrust.
- Mild and moderate developmental speech or language disorders.
- Vocal chord abuse resulting from life-style activities.

BCN determined Petitioner did not meet criteria's since his condition is chronic.

To help the Commissioner resolve the medical issues presented by this case, the matter was assigned to an independent review organization ("IRO") for analysis. The IRO physician reviewer is board certified in otolaryngology and has been in practice for more than 15 years. The IRO report noted that Petitioner's consulting otolaryngologist felt that Petitioner's speech delay might be due to otologic disease. The report also noted that Petitioner's physician reported past ear disease and left middle ear effusion. The report indicated that the records provided by Petitioner's pediatrician revealed no mention of ear infections or other ear disease. Audiometric evaluations showed normal response thresholds for Petitioner's better hearing ear. The reviewer found that there was no evidence that Petitioner's speech delay was secondary to a hearing deficit. The IRO reviewer concluded that, in the absence of objective evidence that Petitioner's speech delay was secondary to otologic disease, the speech delay is most likely developmental in nature.

The Commissioner is not required in all instances to accept the IRO's recommendation. However, the IRO recommendation is afforded some deference by the Commissioner; in a decision to uphold or reverse an adverse determination the Commissioner must cite "the principal reason or reasons why the Commissioner did not follow the assigned independent

review organization's recommendation." MCL 550.1911(16)(b) The IRO's analysis is based on extensive expertise and professional judgment. The Commissioner can find no reason why that judgment should be rejected.

The Commissioner accepts the IRO conclusion that the speech delay is developmental in nature. The certificate provides that speech therapy is not available for developmental speech disorders. Therefore, BCN has properly applied the provisions of its certificate of coverage.

**V
ORDER**

The Commissioner upholds BCN's final adverse determination.

This is a final decision of an administrative agency. Under MCL 550.1915, any person aggrieved by this Order may seek judicial review no later than sixty days from the date of this Order in the circuit court for the county where the covered person resides or in the circuit court of Ingham County. A copy of the petition for judicial review should be sent to the Commissioner of the Office of Financial and Insurance Regulation, Health Plans Division, Post Office Box 30220, Lansing, MI 48909-7720.